

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine Matejcek	Team: Squad #1	CCRB Case #: 201609347	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/05/2016 12:30 AM	Location of Incident: Inside AMC Theatres located at West 34th Street and 8th Avenue	Precinct: 14	18 Mo. SOL 5/5/2018	EO SOL 5/5/2018	
Date/Time CV Reported Tue, 11/08/2016 10:52 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 11/08/2016 10:52 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Donna Ellison	28680	950374	MTS PCT
2. POM Lamarr Barnes	12534	950049	MTS PCT
3. POF Kellyann Flowers	12429	953869	MTS PCT
4. Officers			MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Je Chai	385	923653	MTS PCT
2. POM Stephen Carolan	06693	948749	MTS PCT
3. POF Brittany Lormel	24755	955095	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Lamarr Barnes	Force: Police Officer Lamarr Barnes used physical force against § 87(2)(b)	
B.POF Donna Ellison	Discourtesy: Police Officer Donna Ellison spoke discourteously to § 87(2)(b)	
C. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	
D.POF Kellyann Flowers	Off. Language: Police Officer Kellyann Flowers made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	

Case Summary

On November 8, 2016, § 87(2)(b) filed this complaint with the CCRB via the call processing system. It was originally assigned to Investigator Andrew Bailyn but was reassigned to the undersigned on December 23, 2016 upon his departure from the CCRB.

On November 5, 2016, at approximately 12:30 a.m., § 87(2)(b) visited AMC Loews Theater at 312 West 34th Street in Manhattan to watch a movie, *Dr. Strange*. § 87(2)(b) had already purchased a ticket for the movie but was informed by theater staff that it was too late for him to be allowed inside the theater and that he needed to leave the building. § 87(2)(b) believed that this was unfair and began to argue with members of the theater's staff and security team. Eventually, a theater security guard called 911 and at least 10 officers from the 14th Precinct responded to the scene. When PO Lamarr Barnes entered the theater, he grabbed § 87(2)(b) by the collar of his shirt and pushed him outside (**Allegation A**). While § 87(2)(b) was outside, PO Donna Ellison allegedly stated that he was "crazy" (**Allegation B**). Officers then called for an ambulance to transport § 87(2)(b) to § 87(2)(b). While they waited outside, several unnamed officers called § 87(2)(b) "crazy" and "out of his mind" (**Allegation C**). § 87(2)(b) asked PO Kelly-Anne Flowers if he could speak to the one officer on scene who he felt was treating him with respect. In response, she allegedly said "You like his big, beautiful eyes. You might go home with him" (**Allegation D**). § 87(2)(b) was not arrested or issued a summons as a result of this incident [01 Board Review].

§ 87(2)(b) was transported from the theater to § 87(2)(b) and received psychiatric treatment.

Surveillance video for this incident was obtained from AMC Theaters.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation for this case, § 87(2)(b)
- As of February 2, 2017, no Notice of Claim has been filed in regard to this incident [03 Board Review].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) has one prior CCRB complaint, § 87(2)(b)
- PO Barnes had been a member of the NYPD for five years and has no prior CCRB allegations against him [05 Board Review].
- PO Ellison has been a member of the NYPD for five years and has no prior CCRB allegations against her [05 Board Review].
- PO Flowers has been a member of the NYPD for four years and has no prior CCRB allegations against her [05 Board Review].

Potential Issues

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) [REDACTED] stated that at least 10 officers responded to the scene. During his CCRB interview, § 87(2)(b) [REDACTED] was not consistently able to identify which officers committed specific allegations. Furthermore, § 87(2)(b) [REDACTED] provided the names of officers from memory that did not always correspond with the names of officers who arrived at the scene.

§ 87(2)(b) [REDACTED] described the officer who used force against him as a black male standing 6'3" tall named "PO Binson" or "PO Biscione." None of the officers who were determined by the investigation to have responded had this last name. However, PO Lamarr Barnes of the 14th Precinct stands 6'5" tall and was the only black male officer on scene [06 Board Review]. § 87(2)(g) [REDACTED]
[REDACTED]

§ 87(2)(b) [REDACTED] stated that there were two black female officers on scene, one of which was named "PO Ellison." § 87(2)(b) [REDACTED] stated that PO Ellison repeatedly called him "crazy." § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b) [REDACTED] stated that several officers called him "crazy" or "out of his mind" at different points throughout the incident. § 87(2)(b) [REDACTED] described one of these officers as a white male but did not describe any of the others. However, at a different point during his CCRB interview, § 87(2)(b) [REDACTED] stated that the only officers who were rude to him or committed any misconduct were black.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Finally, § 87(2)(b) [REDACTED] also alleged that PO Ellison used offensive language towards him regarding his perceived sexual orientation. However, during his CCRB interview, § 87(2)(b) [REDACTED] stated that the other black female officer on scene, PO Flowers, could have made this comment. The undersigned interviewed both PO Ellison and PO Flowers and found that PO Flowers made a comment similar to what § 87(2)(b) [REDACTED] alleged. § 87(2)(g) [REDACTED]
[REDACTED]

Allegation A – Force: Police Officer Lamarr Barnes used physical force against § 87(2)(b)

§ 87(2)(b) explained that the incident began when he was repeatedly told by theater staff that he could not see the movie that he had purchased a ticket for and that he needed to leave the premises. § 87(2)(b) began to argue with theater staff about this issue, prompting a theater employee to call 911. § 87(2)(b) stated that he voluntarily dropped to his knees when officers responded to the scene. While § 87(2)(b) was still in the theater’s lobby calmly speaking with the first officers who responded, PO Barnes entered the theater lobby, grabbed him by his shirt, and forcefully pushed him out of the theater. § 87(2)(b) stated that he did not stumble or fall as a result of this force. Once he and PO Barnes were outside on the sidewalk, § 87(2)(b) voluntarily fell to his knees again [01 Board Review].

According to the 911 audio CD, a theater security guard called to report that a trespasser was antagonizing a manager at the theater. The security guard described the trespasser as a black male wearing the same clothing that § 87(2)(b) was wearing on the date of the incident. Throughout the call, a voice can be heard in the background screaming “You ugly son of a bitch,” “It’s over, you lost your job,” and something about buying a ticket to see *Dr. Strange*.

PO Flowers was a member of the first unit to arrive on the scene. When she and PO Lormel entered the theater, they spoke with a security guard, who informed them that the theater was about to close and that § 87(2)(b) needed to leave. When § 87(2)(b) saw the officers, he voluntarily dropped to his knees and screamed “I’m an unarmed black male, please don’t hurt me.” PO Flowers did not know why § 87(2)(b) said this and did not hear any officers or theater employees threaten to hurt § 87(2)(b) at any point throughout this incident. PO Flowers stated that § 87(2)(b) was agitated and screaming from the moment she entered the theater and that he would not listen to her or her partner’s repeated attempts to inform him that he needed to leave the building. After a few minutes, backing units arrived on the scene, including PO Barnes and PO Ellison. At some point after these officers arrived on the scene, § 87(2)(b) stood up again and began to pace around the lobby. Several officers on scene asked § 87(2)(b) to leave the lobby, so he began to slowly walk towards the door without assistance. PO Flowers stated that, although § 87(2)(b) was walking slowly and stopped several times, he eventually made it outside. No officers made physical contact with him as he did this. PO Flowers added PO Barnes never used any form of force against § 87(2)(b) [10 Board Review].

PO Barnes stated that he was not part of the initial unit who responded to the incident. When he arrived on scene with PO Ellison, PO Flowers and PO Brittany Lormel were already asking § 87(2)(b) to leave the theater. § 87(2)(b) was pacing erratically, screaming, and saying “fuck the police.” PO Barnes stated that he did not immediately involve himself in the situation since he was only responding as backup. He spoke with a theater employee, who explained that § 87(2)(b) needed to leave the theater. After approximately 10 minutes, it became clear that § 87(2)(b) (who is 6’7” tall) was not listening to PO Flowers and PO Lormel (two females who are significantly shorter than 6’). PO Barnes then realized that he would have to intervene as the only officer of comparable size to § 87(2)(b) at the scene. PO Barnes approached § 87(2)(b) with the intent to help PO Flowers and PO Lormel escort him out of the theater. PO Barnes told § 87(2)(b) “I know that you bought a ticket, but the movie started over an hour ago and the theater wants you to leave.” In response, § 87(2)(b) told him “Fuck that, I want my money back.” PO

Barnes warned § 87(2)(b) that if he did not leave on his own he would be escorted out, but § 87(2)(b) did not respond to this warning and made no indication that he intended to leave the theater on his own. PO Barnes then said “Come on, let’s go” and grabbed the front of § 87(2)(b)’s jacket near his chest and pushed him forward and through the theater doors until the two of them were outside. PO Barnes stated that § 87(2)(b) did not resist this action aside from tensing up his body. Since PO Barnes took § 87(2)(b) by surprise, he was able to remove him from the theater quickly. Once the two men made it onto the sidewalk, § 87(2)(b) clenched his fists. This caused PO Barnes to worry that § 87(2)(b) intended to punch him, so as soon as they exited the theater’s doors, PO Barnes pushed § 87(2)(b) away from him, which did not cause § 87(2)(b) to fall. § 87(2)(b) never attempted to strike PO Barnes. Other officers followed PO Barnes and § 87(2)(b) outside, including Sgt. Chai, who instructed PO Barnes to handcuff § 87(2)(b). PO Barnes, PO Ellison, and Sgt. Chai then approached § 87(2)(b) to handcuff him. In response, § 87(2)(b) voluntarily fell to his knees again. The officers then handcuffed § 87(2)(b) without incident [08 Board Review].

Like PO Barnes, PO Ellison entered the theater as a backing unit. When she arrived, she saw PO Flowers and PO Lormel speaking to § 87(2)(b) and attempting to calm him down. § 87(2)(b) did not appear to be listening to them and was screaming, crying, and cursing. PO Ellison stated that she and PO Barnes both observed the scene without getting involved at first. Instead, they spoke with a theater security guard, who told them that the theater could not honor § 87(2)(b)’s ticket and that he needed to leave. PO Ellison and PO Barnes then approached § 87(2)(b) and told him what the guard had said. § 87(2)(b) refused to listen to them and stated that, as black officers, they should not be treating him this way. § 87(2)(b) also told the officers that he dislikes black people. At this point, it was clear to PO Ellison that they were not getting through to § 87(2)(b) so she and PO Barnes told him that if he refused to leave the theater he would be escorted out. § 87(2)(b) did not comply, so PO Ellison and PO Barnes each grabbed one of § 87(2)(b)’s arms and guided him out of the theater. PO Ellison stated that § 87(2)(b) cursed at them but did not physically resist. PO Ellison stated that PO Barnes never pushed or shoved § 87(2)(b) and that no additional force was used against him at the scene [09 Board Review].

Sgt. Je Chai, who was on scene to witness the incident, stated that he was informed by theater employees that § 87(2)(b) needed to leave the building immediately after he arrived on the scene. Sgt. Chai observed § 87(2)(b) screaming and refusing to listen to officers for 5-10 minutes before officers ultimately escorted him out of the theater. Sgt. Chai did not recall whether officers made any form of physical contact with § 87(2)(b) as they escorted him outside. Sgt. Chai did not recall which officers participated and did not know if he or PO Barnes were involved. Sgt. Chai did not recall if PO Barnes grabbed § 87(2)(b) by the shirt, pushed him outside, or used any other force against him. Sgt. Chai also did not recall if he heard or learned that § 87(2)(b) made any complaints about force used against him on scene [07 Board Review].

Video obtained for this incident does not show the alleged force. As discussed above, the video is so blurry and dark that it is difficult to tell who is in the frame and what is happening.

After § 87(2)(b) was escorted outside and handcuffed, he was transported by ambulance to § 87(2)(b). His medical records state that, upon his arrival at the hospital, he threatened hospital staff, damaged medical equipment, and required sedation and restraints to calm down [02 Board Review].

Patrol Guide procedure 221-01 requires that an officer use only the reasonable force necessary to gain control or custody of a subject [11 Board Review].

§ 87(2)(g)
[REDACTED]

Allegation B – Discourtesy: Police Officer Donna Ellison spoke discourteously to § 87(2)(b)

Allegation C – Discourtesy: Officers spoke discourteously to § 87(2)(b)

In his initial complaint, § 87(2)(b) stated that officers believed that he was “crazy,” but did not specifically allege that an officer had referred to him as such. In his CCRB interview, § 87(2)(b) stated that PO Ellison referred to him as “crazy” and “out of his mind.” § 87(2)(b) added that, throughout the incident, various officers on scene called him “crazy,” although he could not describe them or provide more specific context [01 Board Review].

PO Ellison stated that she never told § 87(2)(b) that he was “crazy” or “out of his mind” and never made any comments about his mental state. She stated that she never heard any other officer do this and never heard any complaints that an officer had done so [09 Board Review].

Sgt. Chai stated that, although he was not in the immediate vicinity when § 87(2)(b) was escorted out of the theater, he remained on the scene and near § 87(2)(b) until he was placed inside the ambulance. Sgt. Chai stated that he did not recall if he ever called § 87(2)(b) “crazy” or “out of his mind” and did not recall if he ever made any comments to § 87(2)(b) about his mental state. Sgt. Chai did not recall if any other officer had done so, and did not recall whether he heard or learned of any complaints that an officer had done so [07 Board Review].

PO Barnes stated that he never told § 87(2)(b) that he was “crazy” or “out of his mind” and never made any comments about his mental state. He stated that he never heard any other officer do this and never heard any complaints that an officer had done so [08 Board Review].

PO Flowers stated that she did not recall telling § 87(2)(b) that he was “crazy” or “out of his mind” and did not recall making any comments about his mental state. She stated that she did not recall hearing any other officer do this and did not recall hearing or learning of any complaints

that an officer had done so. PO Flowers also did not recall whether officers had any discussion about § 87(2)(b)'s mental state while on scene [10 Board Review].

§ 87(2)(g)

Allegation D – Offensive Language: Police Officer Kelly-Anne Flowers made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)

§ 87(2)(b) made no mention of this allegation in his initial CCRB complaint. In his CCRB interview, § 87(2)(b) stated that, after he was forced outside by PO Barnes, he paused to thank one of the officers for treating him with respect. § 87(2)(b) described the officer that he thanked as a white male with blonde hair and blue eyes. When § 87(2)(b) went out of his way to thank this officer, PO Flowers asked him why. § 87(2)(b) told her that it was because the officer was “being human.” PO Flowers told § 87(2)(b) “Oh, you like his big, beautiful blue eyes. You might go home with him” [01 Board Review].

PO Flowers stated that she made a comment to § 87(2)(b) about liking an officer’s eyes, but insisted that there was no sexual connotation to her statement. PO Flowers explained that, before she made the comment, § 87(2)(b) told her that he did not like black police officers or black people in general. § 87(2)(b) allegedly went on to say that, since he did not like black people, he did not want to speak with any black officers (PO Barnes, PO Ellison, and PO Flowers are all black, as is § 87(2)(b)). § 87(2)(b) then asked PO Barnes if he could speak with PO Carolan, a white male officer with blonde hair and blue eyes. PO Flowers then called PO Carolan over to speak with § 87(2)(b) and told him “Maybe he likes the color of your eyes.” PO Flowers stated that she made this comment because § 87(2)(b) was asking specifically for white officers and that it never had any sexual connotation. She denied making any comments about § 87(2)(b) wanting to “go home with” PO Carolan or any other officer. PO Flowers stated that she did not recall if § 87(2)(b) said anything about PO Carolan’s eyes or if he made any other comments about PO Carolan aside from asking to speak to him because he is white. PO Flowers stated that no officer made any comments either directly or indirectly referring to § 87(2)(b)’s sexual orientation while on scene and that she never heard anyone complain that an officer had done so [10 Board Review].

Sgt. Chai did not recall if he heard any officer make a comment to § 87(2)(b) about liking another officer’s eyes and wanting to go home with him. He did not recall if he heard any officer on scene make any sort of comment either directly or indirectly referring to § 87(2)(b)’s sexual orientation. Sgt. Chai did not recall if he heard or learned of any complaints that such a comment had been made [07 Board Review].

PO Barnes stated that § 87(2)(b) told him not to mistreat § 87(2)(b) because both men are black. PO Barnes stated that he did not hear any officer make a comment about § 87(2)(b) liking an officer’s eyes and wanting to go home with him or make any other comment to § 87(2)(b).

that directly or indirectly referred to his sexual orientation. He never learned that anyone had made a complaint that an officer had done so [08 Board Review].

PO Ellison stated that § 87(2)(b) brought up race several times throughout the incident. He told PO Ellison and PO Barnes that, as black officers, they should have treated him differently. § 87(2)(b) also told PO Ellison that he “doesn’t like black people.” PO Ellison stated that she did not hear any officer make a comment to § 87(2)(b) that directly or indirectly referred to his sexual orientation. She never learned that an officer had done so. PO Ellison also stated that § 87(2)(b) never indicated that he was attracted to any of the officers on scene and that no one made any comments about § 87(2)(b) liking an officer’s eyes [09 Board Review].

§ 87(2)(g)

[REDACTED]

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date